

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KERRY MILLER,

Plaintiff,

v.

Case No. 05-71346
Honorable Patrick J. Duggan

ARDESHIR FAGHIHNIA, VALORIE
HAMMOND, SHERRI GREGUREK, and
DR. MATHAI,

Defendants.

OPINION AND ORDER

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on March 15, 2006.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Plaintiff, a former Michigan Department of Corrections inmate, filed this lawsuit while he still was incarcerated contending that Defendants violated his constitutional rights in that they were deliberately indifferent to his medical needs. Defendants subsequently filed motions to dismiss in which they argued *inter alia* that Plaintiff failed to totally exhaust his administrative remedies as required by *Bey v. Johnson*, 407 F.3d 801 (6th Cir. 2005). This Court referred the motions to Magistrate Judge Paul J. Komives.

On February 22, 2006, Magistrate Judge Komives filed his Report and Recommendation (R&R) recommending that this Court grant the Defendants' motions. Magistrate Judge Komives concludes that Plaintiff failed to exhaust his administrative remedies with respect to some, but not all, of the claims in his complaint. Pursuant to the Sixth Circuit's decision in *Bey*, Magistrate Judge Komives concludes that Plaintiff's entire complaint must be dismissed without prejudice. At the conclusion of the R&R, Magistrate Judge Komives advises the parties that they may object and seek review of the R&R within ten days of service upon them. He further specifically advises the parties that, "[f]ailure to file specific objections constitutes a waiver of any further right of appeal." See R&R at 56 (citing *Thomas v. Arn*, 474 U.S. 140, 147-48 (1985); *Howard v. Secretary of Health & Human Servs.*, 932 F.2d 505, 508-09 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947, 950 (6th Cir. 1981)). Neither party filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Komives.

Accordingly,

IT IS ORDERED, that Defendant Dr. Mathai's motion to dismiss is **GRANTED**;

IT IS FURTHER ORDERED, that Defendants Sherri Gregurek's and Valorie Hammond's motion to dismiss is **GRANTED**;

IT IS FURTHER ORDERED, that Defendant Ardeshir Faghihnia's motion to dismiss is **GRANTED**;

IT IS FURTHER ORDERED, that Plaintiff's complaint is **DISMISSED**

WITHOUT PREJUDICE due to Plaintiff's failure to totally exhaust his administrative remedies.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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Magistrate Judge Paul Komives